

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Revision of the Commission's Rules)
to Ensure Compatibility with Enhanced)
9-1-1 Emergency Calling Systems)

CC Docket 94-102
RM-8143

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OPPOSITION AND COMMENTS
OF NENA, APCO AND NASNA

The National Emergency Number Association ("NENA"), the Association of Public-Safety Communications Officials-International, Inc. ("APCO") and the National Association of State Nine One One Administrators ("NASNA"), hereafter "Joint Commenters," oppose and comment upon certain of the Petitions for Reconsideration and/or Clarification submitted in the captioned proceeding. The most prevalent concerns on the part of the service providers appear to be (1) the requirement to forward 9-1-1 calls from all wireless handsets independently of their "Code Identification," if formally requested to do so by the PSAP serving the area of call origination; and (2) the refusal to grant any general exemption from liability, on the grounds that protections can be specified in contracts with Public Safety Answering Points ("PSAPs") and wireless service end users, as appropriate. Other petitioners urge modifications of the rules for Automatic Location Information ("ALI") accuracy, TTY access and cost recovery. Still others seek full or partial exemption from the new regulations.

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"Non-Code" calls.¹ Initially, and in the later Consensus reached with the Cellular Telecommunications Industry Association ("CTIA"), the Joint Commenters supported limitation of wireless E9-1-1 access requirements to "service-initialized phones." They believed then that non-service-initialized phones would be unable to pass a telephone or other identifying number allowing the 9-1-1 caller to be called back if the call were dropped or disconnected. Because that return calling capability had been ranked high in priority by PSAP operators -- in a survey placed on the record of this proceeding -- the Joint Commenters were reluctant to require the forwarding of 9-1-1 calls if callback would be impossible, especially during a transitional period when ALI would be non-existent or definable only by cell site or cell sector.

Acknowledging these PSAP concerns, but persuaded also that broader E9-1-1 access was desirable, the Commission left to the call-taking organizations the option of requesting that non-code calls be delivered. The Joint Commenters support that outcome. Most of the carrier petitioners believe that the resulting patchwork treatment of non-code calls, even varying among PSAPs within wireless coverage areas, will be confusing if not unworkable. The Joint Commenters acknowledge the difficulties, but are unable to choose at this time between their members who prefer to receive all calls -- even if non-returnable -- and those who believe non-code calls should not be forwarded. We also note that Ad Hoc Alliance for Public Access to 9-1-1 ("Alliance") has expanded on its

¹ The text of the rules appended to the Report and Order in the docket, FCC 96-264, released July 26, 1996, defines "Code Identification" at Section 20.3 as a Mobile Identification Number or its functional equivalent. Leaving aside for the moment the clarifications sought by several petitioners, the FCC considered the code a unique ID for each subscribed handset usually constructed as a dialable telephone number. A "non-code" phone, unsubscribed or lapsed, might still be able to access 9-1-1 even if not identifiable to any carrier network.

claim that callback to non-code phones may be achievable and affordable.² Depending on the responses to the Alliance proposal, the FCC may be led to a uniform solution for non-code access in place of the current local option.

Liability issues. The Joint Commenters continue to believe that state law developed over the years of wireline 9-1-1 operation provides substantial protection against the privacy and ordinary negligence claims of most callers. As customers of wireline carrier services, both tariffed and contracted, PSAPs have been subject to whatever state public utility law allows by way of such limitations. To carriers such as Ameritech (Petition, 14) and US WEST (Supplemental Comments, 10), who suggest "public safety organizations indemnifying carriers for negligence and other unintended errors," the Joint Commenters respond that they do not propose to indemnify, unwittingly, any carrier with whom they are not in some relationship of privity. Given the state/federal jurisdictional differences in the regulation of wireline and wireless carriers, there are fewer linkages between PSAPs and wireless carriers that could bear the weight of indemnity that Ameritech and US WEST propose. If pressed, however, the Joint Commenters are prepared to argue that state rules on wireless carrier liability would be among those powers reserved to non-federal authorities by Section 332(c)(3) of the Communications Act.

The Commission (Report and Order, ¶98) has asked the opinion of the Department of Justice on the treatment of ANI/ALI disclosure under a wiretap act of 1995, and expected to receive word by now. The Joint Commenters urge the FCC to place the Department's views on this record, if available, so that interested parties may respond.

² Comments to FNPRM, September 25, 1996, Attachment E ("9-1-1 Call-Back Solution").

ALI Accuracy. Nokia and BellSouth argue that the Phase II ALI requirement of 125-meter accuracy two-thirds of the time is premature in that proofs of sustained technical feasibility are lacking for the principal radiolocation technologies discussed on this record.³ As the Joint Commenters pointed out earlier, the Commission is entitled to make reasonable projections of the pace and affordability of new or developing technologies.⁴ That is what the agency has done here, relying on the experimental work of such commenters as KSI and Associated Group. Omnipoint (Petition, 15-19) seeks to explain why PCS-1900 systems, and perhaps other PCS carriers, are unable to use "angle of arrival" (AOA) or combined bearing plus "time difference of arrival" (TDOA) radiolocation methods to determine caller location with the specified accuracy. It suggests, however, that "sequential timing advance measurements from multiple base stations" could be achieved quickly. *Id.* at 18.

Omnipoint's proposed ALI guideline would replace the Phase II accuracy target with the words "best commercially reasonable techniques consistent with the licensee's transmission technology" and would preclude any requirement for "base station sites not needed to meet the licensee's coverage objectives." *Id.*, 16. Without endorsing useless construction, the Joint Commenters suggest that radiolocation of wireless callers has become, through the Report and Order, part of the licensee's coverage objectives in the public interest. Moreover, the licensee's discretion to determine what is "commercially reasonable" is qualified by the reality that any licensee's compliance with the ALI requirements is conditioned on the availability of a public funding mechanism for wireless

³ TIA (Petition, 16-17) appears to separate the Phase II accuracy target, as such (125 meters), from the frequency of meeting it (67%). We are guided by the wireless industry's belief that the physics of radio propagation demands some number reflecting probability of error, and we believe the record supports the combination of 125 meters and 33% error rate as readily achievable by October of 2001.

⁴ Reply Comments, March 17, 1995, 6-9.

compatibility improvements. It would be commercially unreasonable to refuse to build ALI compatibility if the cost of construction is to be reimbursed.

TTY Access. Both Omnipoint and TIA suggest modifying the content and deadline of the TTY access regulation. The former asks that digital wireless providers be permitted to fulfill the objectives of the rule "through short-messaging service, and through analog TTY when reasonably feasible." (Petition, 8) TIA also mentions short messaging as a functional equivalency, but believes that a period longer than a year nevertheless may be required to achieve compliance. (Petition, 12-15)

Through its Accessibility Committee, NENA attempts to educate users and the public on special 9-1-1 communications requirements for persons with voice, speech or other impairments, and to stay abreast of technology in the field. The Joint Commenters are aware that wireless providers have approached TTY manufacturers to change their specifications to meet the wireless industry's needs. This should be a two-way street. The wireless industry -- vendors and service providers -- should seek to deliver products for text communication mutually compatible with their systems and those of 9-1-1 call-takers. Accordingly, the "reasonably feasible" language quoted above for analog TTY implementation leaves too much to the discretion of the carrier. The statement that "not all PSAPs accept 9-1-1 calls at the 9-1-1 number" fails to acknowledge the mandate of the Americans with Disabilities Act, whose Title II includes 9-1-1 among emergency services required to provide "direct access to individuals who use TDDs and computer modems." (P.L. 101-336, Section 35.162)

Cost Recovery. AT&T Wireless and Primeco want national standards for cost recovery, while Omnipoint seeks a guarantee that it will not be out of pocket. The Commission denied these requests at ¶¶89 and 90 of the Report and Order. The Petitioners have given the Commission no reason to change its decision

favoring state and local initiatives for cost-effective and creative solutions to funding of wireless compatibility improvements. A repeated message from wireless carriers is that of equal treatment with their wireline counterparts in 9-1-1 delivery. Because wireline E9-1-1 systems were built with a diversity of local funding mechanisms, it seems that a national prescription for wireless compatibility recovery would risk discrimination favoring one or the other of the two types of carrier.

In the Joint Commenters' view, the greater danger to the noble enterprise of upgrading PSAPs, wireline and wireless systems to E9-1-1 compatibility is for any one of these parties to think it can wait for the other to begin. The conditioning of carrier compliance on the availability of a funding mechanism should not mean that either the wireline or the wireless carriers can afford to stay away from the table until the public authorities have sweated out the difficult financing issues on their own. Parties are better advised to move forward together, rather than in sequence, and we ask the FCC to reaffirm this. Carriers -- and, for that matter, radiolocation and equipment vendors -- have every reason to insist that funding mechanisms not be created without their input. These vendors may not be the objects of reimbursement in the plan ultimately adopted, but their views and capabilities will affect the cost and quality of the upgrades.

Conclusion. For the reasons discussed, the Commission should remain open, through its Further Notice, to additional evidence on the subjects of non-code calls and carrier liability protection. There is no present reason to back away from the Phase II ALI performance requirement, nor to diminish access to 9-1-1 by the speech or hearing-impaired. Absent manifest and widespread failures of local agreement on funding mechanisms for the necessary compatibility upgrades by PSAPs, wireline and wireless carriers, and

radiolocation and equipment vendors, national prescriptions are not needed.

What is required is that all interested parties commit to moving forward together.

Respectfully submitted,

NENA, APCO AND NASNA

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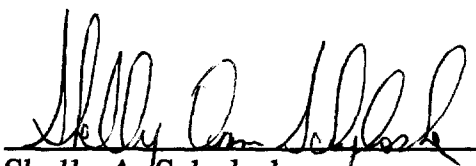
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CERTIFICATE OF SERVICE

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